

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1127 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

-----  
DINESH @ GHOGHABANDAR BABU KHARWA

Versus

STATE OF GUJARAT

-----  
Appearance:

MR YOGESH S LAKHANI for Petitioner

Mr.A.B.Vyas, A.P.P. for Respondent No. 1

-----  
CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 02/02/99

ORAL JUDGEMENT

1. The prayer in this writ petition under Article 226 of the Constitution of India is to quash the show cause notice dated 23.6.1998 (Annexure : A) issued under Section 59(1) and Section 56(A) of the Bombay Police Act with further prayer to quash the externment order dated 29.8.1998 (Annexure : B) and the order of the Appellate Authority dated 16.11.1998 (Annexure : C).

2. Brief facts giving rise to this petition are as under :

The show cause notice under Section 59(1) of the Bombay Police Act was issued to the petitioner to show cause why, in view of two registered criminal cases and the statements of two confidential witnesses highlighting his repeated criminal and anti-social activity, he should not be externed for a period of two years from District Junagadh, Amreli, Rajkot and Porbandar. The petitioner did not file reply to the said show cause notice nor any defence was tendered by him. The case proceeded ex-parte. The Externing Authority passed externment order upon considering the material of the case. The petitioner preferred an Appeal which was dismissed. It is, therefore, this writ petition.

3. No doubt the order of Externing Authority was passed ex-parte against the petitioner inasmuch as he failed to furnish reply to the show cause notice or to give evidence in his defence but that alone is not enough for dismissing the writ petition. There are several grounds on which the impugned order of Externing Authority and the Appellate Authority cannot be sustained.

4. The first ground is that the order of externment is in the nature of preventive order and it is not a punitive order. The show cause notice itself shows that Chapter Case No.62 of 1998 under Section 107 and 116(3) of the Code of Criminal Procedure was registered against the petitioner. This is a preventive remedy. Since in the show cause notice itself this case has been disclosed it means that the Externing Authority was aware at the time of issuing show cause notice that such Chapter case was registered against the petitioner. First criminal activity of the petitioner complained of was dated 12.8.1996. If lesser drastic remedy could be taken against the petitioner under Section 107/116 Cr.P.C. in which he could be bound down for a period of one year on his furnishing surety and personal bond for showing his good behaviour and conduct, during this period there was no necessity for passing externment order. If despite being bound under Section 107/116 Cr.P.C. petitioner violated the bond he could have been further proceeded under the Code of Criminal Procedure. Thus, since equally efficacious remedy was available the drastic remedy of externment could not have been taken against the petitioner. This renders the externment order invalid.

5. The externment order suffers from the vice of non-application of mind inasmuch as it is mentioned in the externment order that the petitioner committed offences punishable under Chapters : XVI and XVII of the Indian Penal Code. The two cases shown in the show cause notice are punishable under Section 143, 141, 149, 324, 504, 506(2), 307, 326, 147 and 148 I.P.Code. These offences are punishable under Chapter : XVI I.P.C. Even the Appellate Authority in its order has mentioned that no offence punishable under Chapter : XVII I.P.C. has been registered against the petitioner. It, therefore, follows that the Externment Authority has casually mentioned without applying its mind to the provisions of Chapter : XVII that the petitioner committed offences punishable under Chapter : XVI and also under Chapter : XVII I.P.C. Due to this non-application of mind the impugned order is rendered invalid. The Appellate Authority should have reversed the order of the Externment Authority on this very ground, but it did not do so. Hence the order of the Appellate Authority also cannot be sustained.

6. Another infirmity in the impugned order and the show cause notice is that in the show cause notice there is vague mention of the statement of two confidential witnesses. It is simply stated in the show cause notice that the statements of these confidential witnesses corroborate the aforesaid activities of the petitioner. Even the extracts of the statement of the two confidential witnesses is not given in the show cause notice and as such the petitioner was prevented from knowing what anti-social activity was high-lighted by these two witnesses with further consequence that the petitioner was prevented from furnishing his effective reply. It is immaterial that he did not appear and furnish reply to the show cause notice.

7. There is also no disclosure that between 12.8.1996 to 23.6.1998 the petitioner repeated his criminal activity. If this was so then the show cause notice was hardly justified. The petitioner has been externed from four districts, viz. Junagadh, Amreli, Rajkot and Porbandar. Some reasons are given for externing the petitioner from these four districts and those reasons are that because of availability of speedy transport and communication facility the petitioner can operate from the Districts Amreli, Rajkot and Porbandar. Apparently these reasons can be said to be furnishing some ground for externing the petitioner from three contiguous districts, but on scrutiny it seems that the

reasons are fanciful. There is no mention that on any occasion the petitioner or his gang operated from other districts Amreli, Rajkot and Porbandar. There is also no disclosure that the petitioner from 12.8.1996 to 23.6.1998 operated even once from these three districts. Consequently externment of the petitioner from contiguous districts is also bad and illegal.

8. For the reasons aforesaid even though the externment order is ex-parte, it cannot be sustained inasmuch as it has been rendered illegal. If the externment order itself is illegal the order of the Appellate Authority confirming such illegal order also becomes illegal. Consequently both the orders have to be quashed. The writ petition, therefore, succeeds and is allowed. The order of Externing Authority (Annexure : B) and the order of Appellate Authority (Annexure : C) are hereby quashed.

sd/-

Date : February 02, 1999 ( D. C. Srivastava, J. )

\*sas\*